

## About Professor Roger Baron

Professor Roger Baron teaches at the University of South Dakota School of Law. A 1976 graduate of the University of Missouri at Columbia School of Law, he practiced law in Missouri for nine years before beginning his teaching career. He is licensed in Missouri, Texas and South Dakota. Professor Baron has a strong academic interest in the matter of subrogation on personal injury claims and related ERISA reimbursement issues. He has authored three significant law review articles which address subrogation and reimbursement issues in the context of personal injury claims. They are as follows:

*Public Policy Considerations Warranting Denial of Reimbursement to ERISA Plans: It's Time to Recognize the Elephant in the Courtroom*, 55 Mercer Law Review 595 (2004).

*Subrogation: A Pandora's Box Awaiting Closure*, 41 South Dakota Law Review 237 (1996).

*Subrogation on Medical Expense Claims: The "Double Recovery" Myth and the Feasibility of Anti-Subrogation Laws*, 96 Dickinson Law Review 581 (1992).

In early 2007 Professor Baron authored the article, *Eight Ways to Defeat or Minimize ERISA Reimbursement Claims*. This article has been published in journals produced by the Trial Lawyers' Associations in the states of Nevada, South Dakota, Ohio, Georgia, Texas, New Mexico, Arizona, Nebraska, South Carolina, Wisconsin, Montana, Florida, and Arkansas.

### **Legislative Activity on ERISA Reimbursement Issues**

Acting at the request of New Jersey Senator Toricelli and with the encouragement of then majority leader South Dakota Senator Tom Daschle, Professor Baron drafted federal legislation which would have implemented the "make whole" doctrine into the ERISA scheme. This legislation was considered, but not adopted, as part of the "Patients' Bill of Rights" which the Senate passed in the summer of 2001. (The Patients Bill of Rights never progressed any further in light of the subsequent Republican domination of Congress which followed 9/11.)

During the year 2006, the U.S. House of Representatives enacted a provision in its version of the Pension Reform Act which would have given ERISA plans an unqualified right of reimbursement. At the request of ATLA, certain members of Congress, and other interested groups, Professor Baron actively lobbied the 27 Senators and Representatives who sat on the Conference Committee appointed to reconcile the House and Senate versions of the Pension Reform Act of 2006. As a result of the hard efforts of all who lobbied against the reimbursement provision, the House Amendment to the Pension Reform Act was defeated.

## **Involvement in Judicial Process**

With regard to the recent U.S. Supreme Court decision in *Sereboff v. Mid Atlantic Medical Services, Inc.*, 126 S.Ct. 1869, 74 USLW 4240, 164 L.Ed.2d 612, (May 15, 2006), Professor Baron was asked to join the team of lawyers representing the Sereboffs after the U.S. Supreme Court granted certiorari. He helped the lead attorney in writing the brief and also in preparation for oral argument. He was present in the Courtroom when the case was argued on March 28, 2006 in Washington D.C.

More recently Professor Baron worked with the lawyers representing Deborah and James Shank in their case involving Wal-Mart. He assisted in the preparation of the briefing in the 8<sup>th</sup> Circuit Court of Appeals (main brief and petition for rehearing en banc) and also with the Petition for Writ of Certiorari filed in the U.S. Supreme Court. In this case, there was a public outcry against the practices of Wal-Mart concerning its reimbursement claims. Although the Supreme Court denied the Petition for Writ of Cert (3/17/08), the public outcry caused Wal-Mart to re-evaluate its policy – upon re-evaluation, Wal-Mart permitted the Shanks to retain all of their settlement recovery and also vowed to change its in-house regulations for the handling of future reimbursement cases.

Within the past couple of years, Professor Baron's Mercer Law Review article on ERISA reimbursement has been cited by three federal district courts in written opinions handed down in Illinois, New Jersey, and Washington. One of his earlier articles on subrogation was cited by the Federal District Court of Nebraska (Judge Urbom) in a 2003 decision denying subrogation.

## **Scholarship and Teaching**

Professor Baron has also authored numerous other law review articles on the topics of Insurance, Civil Procedure and Family Law. His various law review articles have been cited and quoted with approval by state supreme courts and appellate courts in Alabama, Arkansas, California, Michigan, Missouri, New Jersey, North Carolina, North Dakota, Puerto Rico, South Dakota, Texas, Washington, West Virginia, Wisconsin, and Wyoming.

Most recently, Professor Baron was named the 2008 recipient of the John Wesley Jackson Outstanding Faculty Award. This is an award given to a law professor at the University of South Dakota who demonstrates excellence in teaching.

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